

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
SECURITIES INVESTOR PROTECTION	)	CASE NO. 01-3012 HCD
CORPORATION,	)	
PLAINTIFF-APPLICANT,	)	
vs.	)	
	)	
SPECTRUM INVESTMENT SERVICES, INC.,	)	
DEFENDANT.	)	

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	)	
SECURITIES INVESTOR PROTECTION	)	
CORPORATION, AS TRUSTEE FOR	)	
SPECTRUM INVESTMENT SERVICES, INC.,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 01-3045
	)	
MARY L. SANDERS,	)	
DEFENDANT.	)	

Appearances:

Jeffery A. Johnson, Esq., attorney for plaintiff, May Oberfell & Lorber, 300 North Michigan, South Bend, Indiana 46601; and

Joseph D. Bradley, Esq., attorney for claimant Samuel Mercantini, 105 East Jefferson Boulevard, Suite 512, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on July 23, 2003.

Before the court is the Request for Allowance and Payment of Administrative Expense, filed on May 23, 2002, by Samuel Mercantini ("Mercantini"), a creditor of the defendant Mary L. Sanders ("Sanders") and a claimant in this adversary case. Cross-motions for summary judgment then were filed by the plaintiff Securities Investor Protection Corporation ("SIPC") and by Mercantini. Each party filed a memorandum of law in support of the motion and responded to the other party's cross-motion. Once the time for filing briefs had expired, the court took the motions under advisement on March 25, 2003.

### Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rules of Bankruptcy Procedure 7052 and 9014. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

### Background

On January 16, 2001, SIPC was appointed Trustee for the liquidation of Spectrum Investment Services, Inc. (“SISI” or “Spectrum”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”). As Trustee, SIPC filed a complaint on April 3, 2001, to recover fraudulent conveyances and assets of the estate of Spectrum. The complaint alleged fraud and conversion.<sup>1</sup> SIPC asked for judgment against the

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<sup>1</sup> In its complaint, SIPC alleged that the defendant, Mary L. Sanders, former president and owner of Spectrum, contacted specific investors for the purpose of convincing them to purchase investments through her. Relying on Sanders’ representation that their money would be invested, the investors turned over their money for her to invest. However, Sanders made no investments on behalf of the investors. SIPC further alleged that the defendant committed numerous specified acts with the intent to defraud customers, Spectrum and/or its employees. According to the complaint, the defendant used her position as principal and president of Spectrum to convince investors to deposit money with her, with the understanding that the funds would be used to make investments. However, she did not invest those funds. In some instances, she fraudulently removed investments. She transferred money out of accounts intended for the use of Spectrum, its investors and employees. She converted the money for her own personal use. SIPC refunded to the investors the monetary amounts they had turned over to Sanders. In return, the investors assigned to SIPC all right, title, and interest to the claims they may hold against the defendant. SIPC asked for judgment in its favor, with an award of damages, treble damages, expenses and pre-judgment interest, fees and costs.

The court issued a summons requiring the defendant to answer the complaint by May 4, 2001. No answer was filed. No motion for default judgment was filed.

defendant and sought damages that would compensate Spectrum for all funds taken by the defendant, including treble damages as allowed under Indiana law, fees, and costs.

Based upon the complaint, the court, on April 19, 2001, issued an Order of Attachment, ordering the United States Marshal to seize and hold the nonexempt real and personal property of the defendant. The court also ordered the defendant to appear for a hearing on the matter. On June 4, 2001, the hearing was held; neither the defendant nor her counsel appeared. The court, finding that a sufficient basis existed to continue the prejudgment attachment, ordered that the attachment remain in full force and effect. After the defendant's property had been removed from the defendant's locations and sold at auction, the Order of Attachment was rescinded.

On March 8, 2002, Mercantini filed a Motion for Relief from Automatic Stay and Abandonment of Real Estate. The motion stated that, on November 7, 1995, he had sold the Mishawaka property to the defendant for \$240,000.00. The balance on the contract, at the time of the motion, was \$214,236.93; however, after adding interest and expenses, he claimed the total balance owed was \$245,000.00 or more. The creditor said that he had received no payment from SIPC during its occupancy of the Mishawaka real estate. He stated his belief that the fair market value of the real estate was \$250,000-\$260,000.00. In light of that value, Mercantini asserted, the real estate had no substantial equity for the Spectrum estate and was no longer necessary to the administration of the estate. The movant asserted that he received no adequate protection of his ownership interest in the real estate and that he incurred expenses for the property. There was no objection to Mercantini's motion and, on April 29, 2002, the court granted it. It ordered that the real estate be abandoned and that the automatic stay be modified to permit the creditor to recover possession and control of the real estate.

On May 23, 2002, Mercantini filed a Request for Allowance and Payment of Administrative Expense in the amount of \$64,531.80. He had obtained a Judgment for Possession and Cancellation of Land Contract in the St. Joseph Circuit Court on May 13, 2002. At that time, SIPC remained in possession and control of the real estate. The access to and use of more than 4,000 square feet of real estate were of benefit to SIPC, he contended;

therefore, such use constituted an administrative expense under 11 U.S.C. § 503. Mercantini claimed entitlement to the fair rental value of those premises utilized by SIPC for the period from January 17, 2001, through May 17, 2002. The creditor contended that the reasonable fair market rental value of the premises SIPC occupied, calculated at \$10.00 per year per square foot, after taxes, insurance and utilities, was \$53,328.00, and the expenses (taxes, insurance and utilities) came to \$11,203.80. The total amount is \$64,531.80. The creditor requests allowance of that amount as a first priority administrative expense under 11 U.S.C. § 507(a)(1).

On June 12, 2002, SIPC filed its Objection to Request for Allowance and Payment of Administrative Expense. It contended that the defendant, not Mercantini, was the owner of the property until Mercantini obtained his judgment in state court on May 13, 2002. At that time, SIPC turned over the keys of the building to him. For that reason, SIPC asserted, no rent was owed to Mercantini for SIPC's possession of the premises. Moreover, Mercantini collected the rent from a sub-tenant of the building, even though the sub-tenant's lease contract was between the sub-tenant and Sanders. SIPC therefore objected to the creditor's request.

On September 3, 2002, SIPC filed its summary judgment motion on this issue.<sup>2</sup> It argued that there was no genuine issue as to any material fact and that it was entitled to judgment as a matter of law. It presented the following undisputed pertinent facts. SIPC, as the appointed Trustee, was authorized to liquidate the assets of SISI and of its president, defendant Mary L. Sanders. One of the assets was SISI's place of business in Mishawaka, Indiana. That real estate was sold to Sanders by Mercantini pursuant to a written land contract executed on November 7, 1995. SIPC stated that it secured the debtor's premises and protected the assets of the debtor and its customers by changing the locks and alarm system of the business during the first days of the liquidation proceeding. SIPC was in continuous possession and control of the real estate from January 17, 2001, until its turnover of the keys to the building to Mercantini on May 13, 2002. It used two floors of the building.

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<sup>2</sup> The plaintiff filed an amended summary judgment motion and memorandum in support of the motion on October 15, 2002. It is identical to the original motion in every respect except one: It attached Exhibit A, the accounting schedule under the land contract, which was not appended to the original motion.

Mercantini attempted, unsuccessfully, to negotiate a monthly rental with SIPC.<sup>3</sup> SIPC conceded that it did not pay for its use of the premises. However, according to SIPC, Mercantini obtained a legal right to the real estate only after he obtained a judgment against Sanders for possession and cancellation of the land contract. At that time, SIPC, as Trustee of SISI, vacated the premises.

It is SIPC's position that Mercantini had no legal right to request administrative rent for the premises because he had no legal right to the premises. Sanders owned the premises as the buyer under the land contract. Mercantini's contractual relationship was with Sanders. He properly proceeded directly against her by way of foreclosure, based upon her default in payments. SIPC explained that it was obligated to secure the assets of the defendant, and it therefore occupied the premises to protect the assets. However, once Mr. Mercantini requested and obtained relief from the stay and obtained a judgment of foreclosure, SIPC turned over the premises to him.<sup>4</sup> SIPC noted that Mercantini sold the real estate, thereby recouping the net balance due under the contract, \$209,495.85, and returning Mercantini to the position he would have enjoyed if Sanders had not defaulted under the land contract. In addition, Mercantini collected rent from a tenant of Sanders during SIPC's occupancy of the premises. According to SIPC, Mercantini has realized a windfall by receipt of payments due to Sanders. SIPC characterizes the creditor's request for administrative rent as a desire for a further windfall from the failed Spectrum business and the wrongful acts of the defendant.

Mr. Mercantini, in his cross motion for summary judgment, also claimed entitlement to judgment as a matter of law. He pointed out that SIPC did not assume the real estate contract, did not sell the real estate

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<sup>3</sup> According to the correspondence attached to the claimant's memorandum, Mercantini asked for a monthly rent of \$3,750.00. SIPC's attorney countered with a rental amount of \$1,637.11 per month (based on two facts: that Sanders had paid Mercantini \$2,237.11 under the contract and had received \$600.00 monthly from a sub-tenant, and that the sub-tenant now was paying Mercantini) and offered a lump sum payment for the seven months SIPC had occupied the building. The record contains no further correspondence between them.

<sup>4</sup> SIPC also hypothesized that Mercantini might have been entitled to payment if he, as a secured creditor of the defendant, had requested adequate protection pursuant to 11 U.S.C. § 363. However, he did not seek protection and failed to establish that the property was likely to decline in value during the pendency of the bankruptcy and that he, as a secured creditor, would be harmed as a result of the declining value.

and pay Mercantini the balance owed to him under the contract, and did not abandon the real estate and return possession and control to Mercantini. Instead, SIPC elected to reject the contract itself and to negotiate an interim rental agreement with Mercantini for its continued possession and use of the premises. SIPC remained in possession of the premises; however, an agreement was never reached on the interim rental agreement and SIPC made no payments to Mercantini. He argued that he was the owner of record of the real estate and was entitled to payment of his administrative expense under 11 U.S.C. § 503(b)(1)(A).

SIPC filed a response to Mercantini's cross-motion. It asserted that SIPC was the Trustee of Spectrum, not of the defendant Sanders. It insisted that it could not have assumed or rejected a contract between Mercantini and Sanders and could not have sold the real estate. It was required, under SIPA, to secure the debtor's premises and to protect any debtor and customer assets. It was under no obligation to negotiate an interim rental agreement with Mercantini. It contended that Mercantini could not request administrative rent because he was not the owner of the property at issue until he was awarded a judgment of possession. Once he won the judgment, however, SIPC relinquished its possession and control.

### Discussion

The issue before the court is whether the claimant Samuel Mercantini holds a valid claim for administrative rent for the sixteen-month period during which SIPC, as Trustee, held possession and control of the defendant's premises. SIPC asserts that Mercantini had no legal right to request administrative rent because he had no legal right to the property at the time SIPC occupied it. Mercantini contends that he was the owner of record of the real estate and is entitled to the administrative expense.

The parties have filed cross motions for summary judgment. This court renders summary judgment only if the record shows that "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Fed. R. Bankr. P. 7056; *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). The moving party bears the initial burden of

demonstrating that no genuine issue of material fact exists. *See Celotex*, 477 U.S. at 323. If the moving party satisfies its initial burden, then the nonmoving party must “go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)). The court neither weighs the evidence nor assesses the credibility of witnesses. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986). When, as in this case, the parties have filed cross motions for summary judgment, the court must examine the evidence and “construe all inferences in favor of the party against whom the motion under consideration is made.” *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th Cir. 1998) (citing *Andersen v. Chrysler Corp.*, 99 F.3d 846, 855 (7th Cir.1996); *I.A.E., Inc. v. Shaver*, 74 F.3d 768, 774 (7th Cir.1996)). Summary judgment must be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

A. Ownership of the Spectrum property

Mercantini’s entitlement to a claim for an administrative expense depends on the validity of his claim that he owns the Mishawaka property and has a right, as an owner and lessor, to the rent. *See Marriott Family Restaurants, Inc. v. Lunan Family Restaurants (In re Lunan Family Restaurants)*, 194 B.R. 429, 441 (Bankr. N.D. Ill. 1996) (finding that contracts governed by state law are integral to the determination of claims under the Bankruptcy Code). Mercantini insists he is the owner of the Mishawaka property; the Trustee asserts the defendant Sanders owns it.

The court finds first that, under Indiana law, Mercantini, as the seller of the property, retained the legal title to the Spectrum premises as security for the performance of the land contract. Equitable title vested in Sanders, as the purchaser, at the time the land contract was consummated. *See Skendzel v. Marshall*, 301 N.E.2d 641, 646, 261 Ind. 226, 234 (Ind. 1973), *cert. denied*, 415 U.S. 921, 94 S. Ct. 1421, 39 L.Ed. 2d 476 (1974). Once the parties entered into the contract, the buyer assumed the incidents of ownership, and the seller,

by retaining the title, essentially reserved a lien or mortgage “to secure the unpaid balance owed under the contract.” *Kaghann's Korner, Inc. v. Brown & Sons Fuel Co., Inc.*, 706 N.E.2d 556, 560 (Ind. App. 1999) (interpreting *Skendzel*).

Under the provisions of the contract between Mercantini and Sanders, if the buyer defaulted, the seller could demand acceleration of the contract and could pursue whatever remedies were “necessary and appropriate to protect the Seller’s interest under this land contract and in and to the real estate.” R. 37, Ex. A, p. 2 at ¶ 5. It is a matter of record that Sanders disappeared in or around December 2000, that her whereabouts are unknown, and that she is believed to have fled the jurisdiction. The court recognizes the seller’s inability to notify Sanders that he was pursuing his remedies under the contract. The facts in this case reflect other considerations for the seller: (1) the sub-tenant remained in the building, and (2) SIPC moved into the premises in January 2001 to secure the assets and to investigate the circumstances underlying the failed business. The court finds that Mercantini appropriately assumed ownership responsibility of the property, maintaining the premises, paying the bills, and cooperating with SIPC as it changed the locks and conducted its investigation.

The court further determines that Mercantini, by his conduct, protected his legal title once Sanders’ performance, as buyer under the contract, had ceased. When Sanders defaulted, Mercantini had the authority to seek a judgment of ownership and to foreclose on the property. However, SIPC moved into the premises on January 17, 2001, and the court, by its Orders of April 19, 2001, directed SIPC to seize the property of the defendant and stayed any action or proceeding against any of her real estate, including the Mishawaka property at issue in this proceeding.<sup>5</sup> (*See* R. 32, case no. 01-3012). When Mercantini sought rent payments from SIPC, he obtained an agreement in principle but not in amount. Counsel for the Trustee, corresponding with Mercantini’s attorney, stated that, if Mercantini “would provide an invoice for rental at the rate of \$2,237.11 per

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<sup>5</sup> SIPC had sought to stay the actions against Sanders’ real property because it had information that she had used Spectrum funds to make payments on various properties, including this Mishawaka real estate. *See* R. 27 at 2, ¶ 10, case no. 01-3012, “Motion for Stay of Proceedings against Real Property and Personal Property of Mary Lou Sanders.”



month . . . , I have been assured by my client [SIPC] that the invoice will be promptly processed for payment.” R.37, Ex. B (letter of July 11, 2001). Mercantini replied that he had calculated the rent, based on SIPC’s use of 4,000 square feet of space, at \$3,750.00 per month. *See id.*, Ex. C (letter of July 17, 2001). SIPC’s attorney responded by pointing out that Sanders was paying Mercantini \$2,237.11 a month and was collecting \$600 a month from a sub-tenant in the building. Because Mercantini was collecting the \$600.00 rental, SIPC’s counsel calculated that SIPC’s monthly payment should be \$1,637.11, the amount paid by Sanders minus the amount collected from the sub-tenant. He offered to make a lump sum payment of \$11,459.77 for the seven months between January 16 and August 16, 2001 in which Spectrum has been subject to the SIPC proceeding. *See id.*, Ex. D (letter of August 1, 2001). There is no response to that letter. The record therefore reflects a breakdown in negotiations. Nevertheless, it is clear that SIPC treated Mercantini as the owner and landlord of the premises. The court, having considered the record, including the defendant’s sudden disappearance, the Trustee’s seizing of Spectrum’s and Sanders’ assets, the court’s order that any action against Sanders’ real estate be stayed, and the negotiations between the parties, finds that Mercantini held legal title and properly assumed equitable title in the property. He therefore had a right to request payment of the administrative expense of Spectrum’s possession and use of the property.

#### B. Right to Administrative Rent

Mercantini claims that his request for rent qualifies as an allowed administrative expense because it is an actual, necessary expense of the Spectrum estate. Section 503(b)(1)(A) of the Bankruptcy Code authorizes payment of the actual, necessary costs of preserving the estate. The court finds that there was an actual monthly expense that arose after Sanders’ land contract payments ceased and SIPC, as Trustee for the liquidation of Spectrum, moved into the Mishawaka real estate Mercantini had sold to Sanders. SIPC occupied and used the property for sixteen months without paying Mercantini for the space. Section 503(b)(1)(A) also requires that the monthly expense be “a necessary cost of preserving the estate for the benefit of its creditors.” *Einstein/Noah Bagel Corp. v. Smith (In re BCE West, L.P.)*, 319 F.3d 1166, 1173 (9th Cir. 2003); *cf. In re*

*Milwaukee Engraving Co., Inc.*, 219 F.3d 635, 637 (7th Cir. 2000) (noting that § 503(b)(1)(A) authorized the payment of a claim that arose after bankruptcy and was beneficial to the debtor), *cert. denied*, 531 U.S. 1112 (2001). The court finds that the Spectrum premises held the assets that SIPC, as Trustee, investigated and prepared for liquidation and removal. The proceeds from that sale were paid to the Spectrum estate. The property therefore was used for office space, for storage and liquidation of assets, for investigation of the business, and for the collection of evidence. There is no question that the assets of Spectrum — the office equipment, the computers, customer records, etc. — were available for investigation and were stored at the Spectrum premises until liquidation by the Trustee. The court finds that SIPC’s use of the Mishawaka real estate, both for business and for the storage of assets, directly benefitted the estate. *See In re PYXSYS Corp.*, 288 B.R. 309, 318 (Bankr. D. Mass. 2003). The court determines, therefore, that the claim is allowed under 11 U.S.C. § 503(b)(1)(A).<sup>6</sup>

In considering Mercantini’s motion for administrative rent, the court finds it noteworthy that the Trustee was in possession of the Spectrum property for the purpose of preserving its assets and returning property to the Spectrum customers. As the Supreme Court noted, SIPC “was established by Congress as a nonprofit membership corporation for the purpose, inter alia, of providing financial relief to the customers of failing

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<sup>6</sup> The statutory provision that actually covers administrative rent is 11 U.S.C. § 365(d)(3). It intends to give relief to landlords who often were required to accept rental terms the bankruptcy court imposed. It “takes them out from under the ‘actual, necessary’ provision of 503(b)(1) and allows them during that awkward postpetition pre-rejection period to collect the rent fixed in the lease.” *In re Handy Andy Home Improvement Centers, Inc.*, 144 F.3d 1125, 1128 (7th Cir. 1998). That section provides:

The trustee shall timely perform all the obligations of the debtor, . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.

11 U.S.C. § 365(d)(3). The provision has been interpreted to allow the landlord to collect the amount of rent fixed in the lease but not to get more favored treatment. *See id.* The landlord has a rent claim for the period until the court approves rejection of the lease or until rejection by operation of law. *See Paul Harris Stores, Inc. v. Mabel L. Salter Realty Trust (In re Paul Harris Stores, Inc.)*, 148 B.R. 307, 314 (S.D. Ind. 1992). In this case, the SIPC Trustee occupied the Mishawaka property temporarily, and its use of the property could be construed to be a lease arrangement. However, the underlying circumstances do not fit neatly into a § 365(d)(3) analysis, and the court finds that section of little guidance in its consideration of this motion for administrative rent.

broker-dealers with whom they had left cash or securities on deposit.” *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 413, 95 S. Ct. 1733, 1735, 44 L. Ed. 2d 263 (1975). It was authorized to collect the assets, to investigate and to liquidate the defendant’s business operations, and to take all necessary steps to deliver securities to customers. *See* 15 U.S.C. § 78fff-1; *see also* *Mishkin v. Peat, Marwick, Mitchell & Co.*, 744 F. Supp. 531, 555 (S.D.N.Y. 1990). Nevertheless, the costs and expenses of administering the estate and the liquidation proceeding were to be borne by the general estate, to the extent there were existing funds, and to be distributed according to the priorities of distribution set forth in 11 U.S.C. § 726. *See* § 78fff(e). It is the finding of this court that Mercantini, who provided the Spectrum property for the Trustee’s use and control for sixteen months, should be paid a reasonable rent for its possession of the Mishawaka real estate.

The court’s decision is buttressed by the rulings of all other courts that have reviewed the payment of administrative rent in SIPA cases. Those courts have determined that the landlords of the liquidated securities corporations for which trustees were appointed were entitled to administrative rent priority. *See, e.g., Security & Exchange Comm’n v. G.M. Stanley & Co., Inc.*, 424 F. Supp. 1352, 1354 (S.D.N.Y. 1976); *In re Buttonwood Sec., Inc.*, 349 F. Supp. 273, 278 (S.D. Calif. 1972); *In re Bell & Beckwith*, 139 B.R. 647, 649-50 (Bankr. N.D. Ohio 1991). In *Buttonwood Securities*, the California district court concluded that a reasonable pro-rata rent was to be paid for the period in which the Trustee was in possession of the property as part of the expenses of maintaining the estate. *See* 349 F. Supp. at 276 (following *In re Youdelman-Walsh Foundry Co.*, 166 F.381, 382 (E.D.N.Y. 1909)). The district court was persuaded by the long-standing decision of the Second Circuit Court of Appeals, which was “convinced, both upon principle and authority, that where a . . . receiver goes into possession of premises without adopting the lease, for the time being excluding therefrom the lessor and the lessee, the lessor has an equitable claim to be compensated out of the funds in the receiver’s hands for the use and occupation of the premises.” *Oscar Heineman Corp. v. Nat Levy & Co.*, 6 F.2d 970, 975 (2d Cir. 1925) (*quoted in In re Buttonwood Sec.*, 349 F. Supp. at 276). It noted that the Seventh Circuit reached the same conclusion that rent should be paid for occupied property. *See In re Preisler*, 13 F.2d 116, 117 (7th Cir. 1926)

(finding that “[t]he simple fact is that, under the authority and direction of the court, the premises were used, and justice and fair dealing require that the owner shall receive what the use was reasonably worth”) (*quoted in In re Buttonwood Sec.*, 349 F. Supp. at 277). The district court then issued its own holding:

It does not fit this court’s concept of justice, nor of the statute’s intent, to allow priority payment . . . to other creditors who service the needs of bankruptcy administration while denying it to a lessor who supplies the premises indispensable to the proceedings.

*In re Buttonwood Sec.*, 349 F. Supp. at 278; *cf. In re Universal Med. Servs., Inc.*, 357 F. Supp. 1137, 1145 (E.D. Pa. 1973) (holding that a “trustee or other officer of the court when occupying the premises leased by a bankrupt is liable to the landlord for the reasonable and fair rental value of the premises for the duration of his stay while he was attempting to preserve the estate”); *SEC v. G.M. Stanley & Co., Inc.*, 424 F. Supp. at 1354 (noting with approval SIPC cash disbursement of rent for debtor’s offices in satisfaction of customer claims and in fulfillment of SIPA primary purpose).

One case with factual similarities to the one before this court is *In re Bell & Beckwith*, 139 B.R. 647 (Bankr. N.D. Ohio 1991). In that case, SIPC and the Trustee opposed the payment of rent as an administrative expense. The Trustee contended that no rent had been paid because the building was encumbered with a mortgage guaranteed by the general partners of the defendant, Bell & Beckwith. The court, relying on 11 U.S.C. § 365, found that the Trustee had assumed the lease and thus was liable to the landlord for the rent during the period he was in continued possession of the building. *See id.* at 650. The court determined that the Trustee was liable only for the reasonable value of use and occupancy of the premises, which was calculated as an amount equal to the mortgage payments. *See id.*

This court finds that Mercantini’s request for rent qualifies as an allowed administrative expense because it is an actual, necessary expense of the Spectrum estate pursuant to § 503(b)(1)(A) of the Bankruptcy Code.

C. Amount of Administrative Rent

The parties disagreed concerning the amount of the rental payments to be collected from the Trustee. In its consideration of an allowable rent, the court weighs both the Trustee's responsibility to pay a property owner the reasonable worth of the used property and his duty, under SIPA, to protect the investors. *See, e.g., SEC v. Barbour*, 421 U.S. at 421, 95 S. Ct. at 1739 ("Congress' primary purpose in enacting the SIPA and creating the SIPC was, of course, the protection of investors."); *In re Buttonwood Sec.*, 349 F. Supp. at 278 (finding that the SIPC trustee was liable for administrative rent). Section 503(b) provides that administrative expenses shall be allowed "after notice and a hearing." The court therefore will set, by separate order, a hearing on the issue of the amount of administrative rent Mercantini is permitted to recover as a cost of the administration of the Spectrum estate.

Conclusion

For the reasons set forth above, the court finds that the claim for administrative rent filed by Samuel Mercantini, a creditor of the defendant Mary L. Sanders, is allowed as an administrative expense of the Spectrum estate pursuant to 11 U.S.C. § 503(b)(1)(A). Having reviewed the parties' cross motions for summary judgment, the court grants the summary judgment motion of Mercantini and denies the summary judgment motion of the plaintiff SIPC. The court grants Mercantini's Request for Allowance and Payment of Administrative Expense in all respects except the amount of that claim. The amount of the administrative rent will be determined at a hearing to be set by separate order.

SO ORDERED.

Handwritten signature of Harry C. Dees, Jr. in black ink, with the initials JSOI written below it.

HARRY C. DEES, JR., CHIEF JUDGE  
UNITED STATES BANKRUPTCY COURT